Supreme Court, U.S.
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No. 95-1080

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ROBERT PETEREIT and ROBERT NARDELLO,

Petitioners,

vs.

S.B. THOMAS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENT

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Question Presented for Review

Did the Court of Appeals for the Second Circuit err by making its own factual finding on an issue as to which the District Court made no finding where the record was susceptible to only one reasonable conclusion with respect to that issue ?

Parties to the Proceeding

Respondent, S.B. Thomas, Inc. ("Respondent"), is a New York corporation with its principal place of business in Fairfield, New Jersey. Respondent was the only defendant in the District Court proceedings and the Appellant before the United States Court of Appeals for the Second Circuit. Respondent has no subsidiaries and its parent corporation is CPC Baking Co., Inc.

Petitioners, Robert Petereit and Robert J. Nardello, are Connecticut residents who were plaintiffs in the District Court proceedings and Appellees before the United States Court of Appeals for the Second Circuit. Parties to the proceedings below who are not parties to the petition for a writ of certiorari are: Richard SanAngelo, Eric Carl Ahlquist, David Lee Adkins, Richard Earl Desso, James Michael Lonergan, Anthony Frank Pitrone, John Alan Strasser and Wayne Blair Anderson. These individuals are Connecticut residents who were plaintiffs in the District Court proceedings and Appellees before the United States Court of Appeals for the Second Circuit.

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Opinions Below

On October 22, 1993, the United States District Court for the District of Connecticut issued its Memorandum of Decision, subsequently published at *Petereit v. S.B. Thomas, Inc.*, 853 F. Supp. 55 (D.Conn. 1993)(A copy of the Memorandum of Decision is reprinted in the Appendix (the "Appendix")[1] to the Petition for Certiorari (the "Petition") at A. 41 through A. 61.) Respondent appealed to the United States Court of Appeals for the Second Circuit. On August 18, 1995, the Second Circuit issued its opinion affirming in part, reversing in part and remanding the case to the District Court for further proceedings. *Petereit v. S.B. Thomas, Inc.*, 63 F.3d 1169 (2d Cir. 1995) (A copy of the Second Circuit's decision is reprinted in the Appendix at A. 1 through A. 40.) The Second Circuit denied both Respondents' and Appellees' respective petitions for rehearing by Order dated October 5, 1995, a copy of which is reprinted in the Appendix at A. 62.

Statement of Jurisdiction

Petitioners seek review of a decision of the United States Court of Appeals for the Second Circuit dated August 18, 1995 invoking the certiorari jurisdiction conferred on the Court by 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c).

Federal Rule Involved in the Case

Petitioners seek review under Federal Rule of Civil Procedure 52(a).

Statement of the Case

Respondent is a producer of baked goods, including Thomas' English Muffins, which it sells to retail grocery stores both in Connecticut and throughout the United States. Petitioners are independent contractors who distribute Respondent's products in and around Waterbury, Connecticut.

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[1] All citations to the appendix (A.) contained herein are to Petitioners' Appendix.

On or about April 14, 1993, Respondent announced a realignment of sales territories for some of its Connecticut distributors, including Petitioners, effective as of April 26, 1993. In late April 1993, Petitioners and Richard SanAngelo[2] commenced an action in the United States District Court for the District of Connecticut seeking to enjoin Respondent from realigning their sales territories. Almost immediately after that, seven of Respondent's distributors operating out of Newington, Connecticut and East Hartford, Connecticut (the "Ahlquist Plaintiffs")[3] commenced an action against Respondent in Connecticut Superior Court seeking damages and to enjoin Respondent from realigning their sales territories. Petitioners and the Ahlquist Plaintiffs alleged, among other things, that Respondent breached alleged oral agreements which purportedly prohibited realignment of sales territories, wrongfully terminated their alleged franchise rights in violation of the Connecticut Franchise Act (*Conn. Gen. Stat.* § 42-133f(a)) and violated the Connecticut Unfair Trade Practices Act ("CUTPA")(*Conn. Gen. Stat.* § 42-110g).

Respondent removed the state court action commenced by the Ahlquist Plaintiffs to the United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 1332 and 28 U.S.C. §§ 1441 and 1446. The District Court consolidated the cases for trial finding "no material distinguishing factual issues." (A. 42). The District Court bifurcated the trial, trying the question of liability first and reserving any hearing on damages until the issue of underlying liability, if any, was resolved. After a bench trial before United States District Judge Peter C. Dorsey, the District Court issued a Memorandum of Decision wherein it held: (1) that Respondent agreed to provide

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[2] The Petereit Plaintiffs are Robert Petereit ("Petereit"), Robert J. Nardello ("Nardello"), and Richard SanAngelo ("SanAngelo"). However, only Petereit and Nardello are parties to the Petition for Certiorari.

[3] The Ahlquist Plaintiffs are Eric Carl Ahlquist ("Ahlquist"), David Lee Adkins ("Adkins"), Richard Earl Desso ("Desso"), James Michael Lonergan ("Lonergan"), Anthony Frank Pitrone ("Pitrone"), John Alan Strasser ("Strasser") and Wayne Blair Anderson ("Anderson").

the distributors with permanent territories and that its attempted and/or actual realignment of these territories was a breach of contract, anticipatorally with respect to the Petitioners, and actually with respect to the Ahlquist Plaintiffs. The District Court enjoined Respondent from unilaterally changing the store assignments of the Petitioners and ordered Respondent to rescind its realignment of the Ahlquist Plaintiffs' sales territories and to restore their previous routes (A. 49-50); (2) all of the plaintiffs were "franchisees" within the meaning of the Connecticut Franchise Act (A. 51-59); (3) Respondent's realignment was a termination of each plaintiffs' franchise rights without good cause violating the Connecticut Franchise Act (*Conn. Gen. Stat.* § 42-133f(a)) (A. 51-59); (4) plaintiffs failed to prove any CUTPA or contractual interference claims (A. 59-61); and (5) plaintiffs were entitled to an award of costs and attorney's fees. (A. 60-61).

On appeal, the Second Circuit Court of Appeals affirmed in part, reversed in part and remanded the case to the district court. *Petereit v. S.B. Thomas, Inc.*, 63 F.3d 1169 (2d Cir. 1995)(A. 1-40). The Second Circuit reversed the District Court's finding that Respondent breached oral agreements with Petitioners and four other plaintiffs by realigning their sales territories, holding that Respondent had the right to realign their territories pursuant to the terms of so called "confirmation letters." (A. 10-19). A detailed discussion of these confirmation letters is discussed at A. 11 and A.12 n. 1. The Second Circuit held that those letters were binding contracts wherein Thomas had expressly reserved its right to realign territories and that any alleged oral representations to the contrary, which were credited by the District Court, were barred by the parol evidence rule. (A. 10-19). Accordingly, the Second Circuit held that the above distributors did not have a valid breach of contract claim based upon the realignment. As to distributors for whom Thomas could not locate confirmation letters (*i.e.*, Ahlquist, Anderson, Desso and SanAngelo), the Second Circuit deferred to the factual findings of the District Court and affirmed its finding that these four distributors had oral contracts that were breached by the realignment. (A. 19). The Second Circuit held that they were

entitled to recover whatever damages they could prove on remand but reversed the District Court's award of injunctive relief. [4] (A. 19; 34-37).

Reasons for Denying the Writ

This Court should deny the Petition because it implicates no substantial factual or legal questions of importance to litigants outside the confines of this case and because the Second Circuit correctly decided the issues below. Petitioners simply argue that the Second Circuit improperly reversed one of the District Court's factual findings in violation of Federal Rule of Civil Procedure 52(a). In fact, the Second Circuit did not reverse the District Court's factual finding but rather made its own factual finding on an issue as to which the District Court had not made a finding. Therefore, this Court's holding in *Anderson v. Bessemer City*, 470 U.S. 564 (1985) does not apply. There was no need to remand for a finding of partial integration because the facts in the record only permitted one conclusion by any reasonable trier of fact. Additionally, the "clearly erroneous" standard of review does not apply where, as here, a trial court's factual findings were manifestly influenced or controlled by a legal error or misunderstanding of relevant law. Finally, even if the Second Circuit's decision could somehow be construed as reversing a factual finding of the District Court, this Court should still not grant certiorari because the District Court's finding with respect to the effect of the confirmation letters was clearly erroneous.

Petitioners rely primarily on this Court's holding in *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564 (1985) (A.

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[4] While affirming the District Court's finding that plaintiffs were all "franchisees" within the meaning of the Connecticut Franchise Act, the Second Circuit reversed the District Court's finding that the realignment constituted a constructive termination of the distributors' franchise rights under the Connecticut Franchise Act, finding that Respondent was justified, as a matter of law, in implementing the realignment. The Connecticut Franchise Act issues will not be discussed in detail as they are not relevant to the issues raised in the Petition.

2). *Anderson* does not apply because the Second Circuit did not set aside any express factual finding of the District Court. Petitioner's reliance upon *Anderson* is predicated upon the faulty premise that the Second Circuit reversed the District Court's finding that "no single document" constituted a complete integration of the contract between Respondent and the distributors. (A. 50). However, the Second Circuit did not reverse the District Court's finding that *complete integration* was lacking but instead found that the District Court erred in failing to consider whether the so-called confirmation letters were a *partial integration* of the contractual relationship between the parties:

> The district court treated the confirmation letters merely as evidence of the content of the oral agreements between Thomas and plaintiffs, rather than as written contracts. In doing so it noted that "no single document has articulated the understanding of the parties." *What the district court failed to recognize was that even if the letters were only partial articulations of the parties' agreements*, the parol evidence rule would still operate to exclude oral testimony of contract terms inconsistent with those in the writings.

A. 14 (citations omitted)(emphasis added).

Accordingly, the Second Circuit made its own finding with respect to partial integration based upon the overwhelming evidence in the record:

> Whether the parties intended a writing to be an integration of their oral agreement presents a question of fact. As noted above, the district court treated the confirmation letters as evidence of the terms of the oral agreements, rather than as contracts in their own right. Hence, the district court made no findings as to whether Thomas and the distributors intended the confirmation letters to be integrated agreements. Normally, at this juncture we would remand this issue to the district court for it to make

> such a finding. But the record leaves us with a firm conviction that a reasonable trier of fact could come to but one conclusion.

A. 15-16 (citations omitted).

A court of appeals is permitted to make its own findings of fact without remanding if the record shows that " 'all the facts relied upon to support the judgment are in the record and are undisputed, or if the record as a whole presents no genuine issue of material fact.' " *E.g.*, *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1313 (5th Cir. 1985), *quoting Armstrong v. Collier*, 536 F.2d 72 (5th Cir. 1976) (*quoting King v. Comm'r. of Internal Revenue*, 458 F.2d 245, 249 (6th Cir. 1972)). Remand is unnecessary if " 'a complete understanding of the issues is possible...[and] there is a sufficient basis for the appellate court's consideration of the merits of the case.' " *Tejada v. Dugger*, 941 F.2d 1551, 1555 (11th Cir. 1991), *cert. denied*, 502 U.S. 1105 (1992), *quoting Gulf Towing Co., Inc. v. Steam Tanker, Amoco, New York*, 648 F.2d 242, 245 (5th Cir. 1981); *See also Kanarek v. Hatch*, 827 F.2d 1389, 1391 (9th Cir. 1987); *Patterson v. Greenwood School Dist. 50*, 696 F.2d 293, 295-296 (4th Cir. 1982). Here, the District Court found that the Respondent sent the confirmation letters in question to the relevant distributors noting "the assignments to be non-permanent and non-exclusive...." (A. 42). The Second Circuit, based upon a record that gave it a complete understanding of the issues, properly concluded that the confirmation letters were a partial integration that fully articulated the parties' agreement that the assigned territories were not permanent.

Contrary to Petitioners' suggestion, such a finding was not inextricably intertwined with issues of witness credibility but instead depended upon the legal effect to be accorded the confirmation letters. The Second Circuit correctly found that the District Court misconstrued the legal significance of the confirmation letters, which were susceptible to only one reasonable conclusion. When the record permits only one finding, the appellate court can make the finding itself, without

remand to the district court. *E.g.*, *Marchiando v. State of Illinois, Dept. of the Lottery*, 13 F.3d 1111, 1114 (7th Cir. 1994), *cert. denied*, *Illinois Dept. of the Lottery v. Marchiando*, 114 S.Ct. 2675 (1994); *Williams v. Poulos*, 11 F.3d 271, 281 (1st Cir. 1993). Moreover, a court of appeals may overturn a district court's factual findings, even if it is based upon the credibility of witnesses, where there is objective documentary evidence contradicting or refuting the challenged testimony. *See Goffman v. Gross*, 59 F.3d 668, 672 (7th Cir. 1995).

Alternatively, even assuming *arguendo* that the Second Circuit's decision could somehow be construed as reversing one of the District Court's factual findings, the rule that an appellate court may not disturb findings of fact made by a trial court unless they are clearly erroneous does not apply where, as here, the trial court's factual findings were manifestly influenced or controlled by a legal error or misunderstanding of the relevant law that manifestly influenced or controlled the trial court's findings of fact. *E.g.*, *Texaco Puerto Rico, Inc. v. Dept. of Consumer Affairs*, 60 F.3d 867, 874-875 (1st Cir. 1995); *Lincoln v. Bd. of Regents of University Sys. of Georgia*, 697 F.2d 928, 938 n. 12, *reh'g denied*, 705 F.2d 471, *cert. denied*, 464 U.S. 826 (11th Cir. 83); *Ammerman v. Miller*, 488 F.2d 1285, 1300 (D.C. Cir. 1973). Moreover, there is no error in any event because the District Court's conclusion that the confirmation letters did not contain language reserving to Respondent the right to realign territories and were of no legal effect (A. 42, 46, 49-50) was clearly erroneous. As stated above, the Second Circuit found that the findings of the District Court with respect to the confirmation letters arose out of a failure to recognize a potential issue of partial integration and resulting failure to properly apply the parol evidence rule. (A. 11- 17).

Conclusion

This Court should deny the Petition for a writ of certiorari because it implicates no substantial questions of significance to litigants outside the confines of this case and because the Second Circuit correctly decided the issues below. The Second Circuit did not set aside any express factual finding of the District Court but rather made its own factual finding on an issue as to which the District Court made no finding. Therefore, this Court's holding in *Anderson v. Bessemer City*, 470 U.S. 564 (1985) does not apply. There was no need to remand for a finding of partial integration because the facts in the record only permitted one conclusion by any reasonable trier of fact. Additionally, the "clearly erroneous" standard of review does not apply where, as here, a trial court's factual findings were manifestly influenced or controlled by a legal error or misunderstanding of relevant law. Finally, even if the Second Circuit's decision could somehow be construed as reversing a factual finding of the District Court, this Court should still not grant certiorari because the District Court's finding with respect to the effect of the confirmation letters was clearly erroneous.

Dated: February 29, 1996

Respectfully Submitted,

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